

Commission on Health and Safety and Workers' Compensation

DRAFT MINUTES OF MEETING

December 12, 2008

Elihu M. Harris State Building

Oakland, California

In Attendance

Chair Angie Wei

Commissioners Catherine Aguilar, Allen Davenport, and Sean McNally

Executive Officer Christine Baker

Absent

Commissioners Kristen Schwenkmeyer, Robert Steinberg, and Darrel "Shorty" Thacker

Call to Order

Angie Wei, 2008 CHSWC Chair, called the meeting to order at 10:05 a.m.

Chair Wei stated that the meeting would proceed as a sub-committee and the Agenda items would be re-arranged until a quorum was present.

Minutes from the November 6, 2008 CHSWC Meeting

Chair Wei requested a vote on the Minutes of the previous meeting.

CHSWC Vote

Commissioner Davenport moved to approve the Minutes of the November 6, 2008 meeting, and Commissioner McNally seconded. The motion passed unanimously.

Claims Adjuster and Bill Review Training Clarification Report, Insurance Code Section 11761

Judge Lachlan Taylor, CHSWC

Christine Baker stated that this paper was done collaboratively by Commission staff. Judge Taylor stated that the report was prepared to answer the question raised at the last Commission meeting as to whether the program for training and certification for claims adjusters was working appropriately and whether it is appropriately enforced. The report describes the background and the training program requirements for claims adjusters, medical-only claim adjusters and bill reviewers. The program is not an adjuster certification program, though the employer certifies that its adjusters have been trained. It is administered by the employer, which could be the insurer, the self-insured employer or the third-party administrator for the self-insured employer.

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The Department of Insurance administers the program though the Department of Insurance does not have jurisdiction over self-insured employers or their third-party administrators. There is a record-keeping requirement, and the records are available for review. There is no systematic enforcement program in place. It appears that the insurers are substantially complying. The Department is not in a position to evaluate if self-insured employers and their third-party administrators are compliant. The program is fairly new, and it is difficult to assess if it is working as expected. It remains to be seen whether there is a need to revise it or not. The Department of Insurance has not been receiving complaints about the program.

Commissioner Aguilar stated that she appreciates the work that Commission staff has done on the report and that the report is very thorough. She stated that she would like to trust that companies are following the requirements but she is concerned about enforcement. She would like to see the study go out to raise awareness of the requirements. Judge Taylor stated that third-party administrators (TPAs) are not responsible for the training; the insurance carrier is and is required to certify that there has been training. Commissioner Aguilar stated that self-insured employers should also be aware of the requirements and their responsibility.

Chair Wei asked for a motion to approve for circulation and comment when a quorum was present.
She opened the discussion for public comment.

Public Comment

Steve Catollica, representing the California Society of Industrial Medicine and Surgery, the California Society of Physical Medicine and Rehabilitation and U.S. Healthworks, stated that he is concerned about the certification program and the lack of enforcement. He stated that he is hoping that the Commission is ready to make recommendations for most likely a legislative suggestion to create an enforcement process. He asked whether the Department of Insurance has authority over TPAs, and Commissioner Aguilar responded that the Department of Self-Insurance under the Department of Industrial Relations (DIR) licenses TPAs. He stated that if the Commission is willing to include in this report or in follow-up to this report recommendations on how an enforcement process could be established, that would be an important next step.

Comments from Commissioners

Chair Wei stated that she would like Commission staff to solicit feedback on the report and input on recommendations for both enforcement and governance. She stated that maybe it would make sense to for everyone to be under one rubric, but she is a little perturbed that the statute would allow for TPAs not being required to comply with certification, while user employers are. Judge Taylor commented that the statute identifies insurers as insurance carriers, self-insured employers, and self-administered employers. Chair Wei stated that it might be time to re-define or re-create a third category for TPAs and see what requirements that they would have. She stated that Commission staff might want to make the first attempt to address recommendations for enforcement and then request feedback from the public.

Judge Taylor stated that it could be useful to get to a sense of how many complaints there are, as

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the Department of Insurance is not receiving complaints. Commissioner Aguilar stated that it is not easily known how to get trained and/or certified. There is a form to fill out, which is new since 2006. Chair Wei asked where the form goes as it is not easy to identify that. Chair Wei stated that she appreciates Commissioner Aguilar bringing this item to the attention of the Commission.

CHSWC Vote

Commissioner Aguilar moved to approve for circulation and comment the Claims Adjuster and Bill Review Training Clarification Report with a proviso of looking at a process for soliciting recommendations on how to strengthen the enforcement and governance of the training, and Commissioner Davenport seconded. The motion passed unanimously.

Executive Officer Report

Christine Baker, CHSWC

Christine Baker stated that Commission staff has worked productively in 2008: Lachlan Taylor, Janice Yapdiangco, Irina Nemirovsky, Selma Meyerowitz, Chellah Yanga, Oliva Vela, Nurgul Toktogonova, and Chris Bailey have all been absolutely dedicated staff. She stated that she would particularly like to recognize Janice Yapdiangco who will be leaving the Commission and taking a position with the Labor Commissioner's office for her dedication and hard work and wish her very well in her new appointment and responsibility.

Chair Wei stated that she would like to thank Commission staff for their work and that she would like to recognize Janice, who has been staff to the Commission since its statutory inception and has brought her deep service to the success of the Commission.

Draft Inpatient Hospital Services Report

The report is part of a series of papers that will be updated periodically; it has been prepared by RAND for circulation but has not been edited and formally peer reviewed. The data are from 2003 through 2005 and will be updated when the data come in. A formal presentation will be made at the next Commission meeting. Ms. Wynn's paper discusses the decreases in workers' compensation inpatient hospital stays and the mix, the estimated payment per discharged stays, and aggregate payments were reduced by 5.1 percent. The paper raises concerns that warrant monitoring and consideration for fee schedules.

Lachlan Taylor stated that the study was done using data from the Office of Statewide Health Planning and Development (OSHPD) and shows a 9.6 percent decrease in workers' compensation in-patient hospital days during the period 2003 to 2005, while the estimated payment per discharge increased by 5.1 percent. This is estimated based on fee schedules, assuming fee schedules were applied, not based on actual payment data from payors. This produced an estimated 5.1 percent reduction in the total cost for hospitalizations. The important measure is the relationship between the cost to the hospital for providing services and the amount being paid. The estimated average payment-to-cost ratio of hospital stays was 1.09 percent or

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approximately 9 percent higher payment than the cost of providing service; this varied depending on the type of service provided. Because of the variation, there may be some need to modify the fee schedule. Medicare is actually modifying its fee schedule. Since the California fee schedule is based on Medicare, it may be important to wait to see the Medicare changes; then the Administrative Director would have jurisdiction to make further changes in the California schedule.

Mr. Taylor stated that the fee schedule is based on the diagnostic relative group (DRG). There is a standard payment per DRG. In addition to the DRG-based fee, in California workers' compensation, there is a direct reimbursement for the cost of spinal implant hardware within certain DRGs. The passthrough adds to the cost and creates an average payment to cost ratio for inpatient stays was already higher than the average for all types of reimbursements. In addition, the passthrough creates an incentive to shift less complex spinal surgeries from outpatient to in-patient settings where there will be the additional passthrough. This should be examined further, particularly in terms of the question of who is entitled to the passthrough, whether a third-party provider of the hardware or the hospitals that provide the DRG. It has also been observed that hospital charges are substantially higher than costs. In those areas where the fee schedule is not currently applicable, payors may be paying more.

Chair Wei stated that she would entertain a motion to approve for circulation and comment with the understanding that there would be a more formal presentation from RAND at the next Commission meeting.

CHSWC Vote

Commissioner Aguilar moved to approve for circulation and comment the RAND report on Inpatient Hospital Services: An Update on Services Provided Under California's Workers' Compensation Program Report, and Commissioner Davenport seconded. The motion passed unanimously.

2008 Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Advisory Board Report

The WOSHTEP Advisory Board is submitting its fifth Annual Report in compliance with its mandate in Labor Code Section 6354.7 to prepare an annual written report evaluating the use and impact of the programs developed for WOSHTEP. This program has been extremely successful and well received. Small business has benefited significantly, as well as have others who have partnered on the program, including the State Compensation Insurance Fund (SCIF) and other organizations represented on the Advisory Board.

In 2008, WOSHTEP accomplishments include:

- A Guide for Employers -- "Heat Hazards in Agriculture" -- available in English and Spanish on the CHSWC website. DIR asked to be a partner in disseminating this material.
- Small Business Resource packet for small business across many industries adapted for national use.

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- A Janitorial Safety Training Program developed for small businesses in the janitorial industry, which will soon be available.
- A Motor Vehicle Safety Factsheet, which will soon be available.
- A Guide on the Young Worker Leadership Academy – “Teens Speak Out for Safety on the Job: Lessons from the Young Worker Leadership Academy” -- developed for national use and available to help other states develop their own Young Worker Leadership Academies.
 - It is available on the www.youngworkers.org website, along with other materials about the California Partnership for Young Worker Health and Safety which is funded by the Commission.
- A new public information campaign to highlight the activities of WOSHTEP participants.

WOSHTEP has served over 3,000 workers and over 750 employers, and has provided over 3,500 hours of instruction. This is a positive prevention program.

Chair Wei asked for a motion to approve the report. She opened the discussion for public comment; there was no public comment.

CHSWC Vote

Commissioner McNally moved to approve for final release and posting the 2008 WOSHTEP Advisory Board Annual Report, and Commissioner Aguilar seconded. The motion passed unanimously.

Selected Indicators in Health and Safety and Workers’ Compensation: 2008 Report Card for California

Ms. Baker stated that Commission staff each year selects certain indicators from the Annual Report and prepares a Report Card for California. The Report Card has been updated and is ready for posting.

CHSWC Vote

Commissioner Davenport moved to approve for final release and posting the “Selected Indicators in Health and Safety and Workers’ Compensation: 2008 Report Card for California,” and Commissioner Aguilar seconded. The motion passed unanimously.

Chair Wei stated that this type of indicators report is very helpful to everyone in workers’ compensation system and that it would be helpful to do a legislative briefing to new members of the Legislature. Ms. Baker stated that they would be pleased to do that, and Chair Wei stated that perhaps some of the Commissioners could help with that. She asked for public comments; there was none.

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Final Reports: Summary of the ONIC Roundtables; Summary of June 27, 2008 Schools Injury and Illness Prevention Program Roundtable; and Summary of July 16, 2008 Workplace Wellness Roundtable

Ms. Baker stated that several reports are available that summarize the roundtable discussions that took place this past year: the Summary of the Occupational and Non-Occupational Integrated Care (ONIC) Roundtables; the Summary of June 27, 2008 Schools Injury and Illness Prevention Program Roundtable; and the Summary of July 16, 2008 Workplace Wellness Roundtable. The reports reflect what was accomplished during those meetings.

Chair Wei asked for public comment; there was none.

CHSWC Vote

Commissioner Davenport moved to approve for final release and posting the Final Reports on the Summary of ONIC Roundtables; Summary of June 27, 2008 Schools Injury and Illness Prevention Program Roundtable; and Summary of July 16, 2008 Workplace Wellness Roundtable, and Commissioner McNally seconded. The motion passed unanimously.

Election of Commission Chair for 2009 (Employer)

Chair Wei stated that the chair for 2009 would be from the management side. She opened the nomination process.

CHSWC Vote

Commissioner Aguilar moved to nominate Commissioner McNally as the Commission Chair for 2009 (Employer), and Commissioner Davenport seconded. The motion passed unanimously.

Chair Wei congratulated Commissioner McNally and thanked him for taking on the role as Chair of the Commission.

Public Comment

Jane Dressler from the Occupational Therapy Association of California requested a change to the surgical treatment for carpal tunnel syndrome. The treatment is currently limited to three to five visits, but the request would be for a change in language to up to 12 treatments, based on the client's needs and the occupational therapist's clinical judgment. Surgically incised tissue takes three to six weeks to heal; in the regulations, it is understood that occupational therapy and physical therapy involve increasing strength and range of motion and functional activities, as well as education on ergonomics and learning to change expectations. She stated that she had a one-page document on this recommendation to submit to the Commission.

Chair Wei thanked Ms. Dressler and asked that she submit the document as it is welcome along with the feedback and she stated that Commission staff would do due diligence.

Comment from Commissioners

Commissioner Davenport stated that he would like to add his thanks to Janice Yapdiangco for her service over the years.

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Adjournment

Commissioner Wei stated that the next CHSWC meeting is scheduled for February 26, 2009, in Oakland, at 10:00 a.m.

CHSWC Vote

Commissioner Davenport moved to adjourn the meeting, and Commissioner McNally seconded. The motion passed unanimously.

The meeting was adjourned at 10:35 a.m.

Approved:

Sean McNally, Chair

Date

Respectfully submitted:

Christine Baker, Executive Officer

Date